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# **Notice of Allowability**

**Application No.**

10/025,609

**Examiner**

Saba Tsegaye

**Applicant(s)**

HSU ET AL.

**Art Unit**

2662

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 10/12/04.
2. ☒ The allowed claim(s) is/are 1, 3-10, 19-36, 53 and 55-58 renumbered as 1, 2, 27, 13, 3, 19, 7, 14, 4, 22, 11, 28, 17, 5, 20, 8, 15, 23, 12, 29, 18, 6, 21, 9, 16, 24, 25, 31, 32, 10, 26 and 30 respectively.
3. ☒ The drawings filed on 12/26/01 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

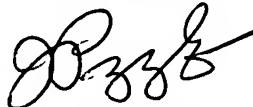
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## **Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____  |

  
**JOHN PEZZLO**  
**PRIMARY EXAMINER**

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Donald E. Stout on 01/10/05.

The application has been amended as follows:

Claim 1:

First paragraph:

In line 4, the word "the" before the word mobile has been replaced by --a--.

In line 6, the word "a" before the word mobile has been replaced by --the--.

Paragraph five:

In line 4, the word "a" before the word modulation has been replaced by --the--.

Paragraph six:

In line 3, the word "a" before the word modulation has been replaced by --the--.

In line 6, at the end of the paragraph a period --- has been added.

2. The following is an examiner's statement of reasons for allowance: the prior art does not teach or fairly suggest the combination of elements and features as claimed, which includes: computing a frame error rate of data packet transmission to a mobile station and comparing that

Art Unit: 2662

calculated frame error rate to a threshold frame error rate; computing a throughput data rate of data packet transmission to the mobile station and comparing that calculated throughput data rate to a threshold throughput data rate; generating a trigger at the mobile station which identifies which of frame error rate or throughput is to be used to control selection of a modulation and coding selection method to be used at a base transceiver station to transmit data packets on a forward shared channel to the mobile station; and transmitting the generated trigger to the base transceiver station where the trigger is used at least as part of a selection criteria for choosing one of a frame error rate or a throughput dependent modulation coding selection method used to transmit the data packets on the forward channel to the mobile station (as in claims 53 and 55).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saba Tsegaye whose telephone number is (571) 272-3091. The examiner can normally be reached on Monday-Friday (7:30-5:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on (571) 272-3088. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2662

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ST

January 10, 2005

A handwritten signature in black ink, appearing to read 'J. Pezzlo', is positioned above the printed name and title.

**JOHN PEZZLO**  
**PRIMARY EXAMINER**